

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SCOTT RODGERS)	C.A. No. 04-11842-PBS
Plaintiff,)	
)	
v.)	
)	
CORRECTION OFFICER ORCHID,)	
UNKNOWN CORRECTION OFFICER JOHN)	
DOE, JOE WHITMORE, DR. HOWARD,)	
JOHN SMITH, PLYMOUTH COUNTY)	
Defendants.)	
)	

PLAINTIFF'S MOTION FOR SANCTIONS

Now comes the Plaintiff in the above-entitled matter and hereby moves this Court, pursuant to Fed. R. Civ. P. 37(b)(2)(c) and 37(d), for the sanction of default judgment against Defendant Howard, or in the alternative, \$1592.80. As grounds therefore, the Plaintiff states the following:

1. On August 24, 2004, the Plaintiff filed his complaint in this Court.
2. On March 1, 2005, the Plymouth County Sheriff's Office answered on behalf of Defendant Howard.
3. On November, 8, 2005, counsel for the Sheriff's Department moved to withdraw its representation, asserting that it had erroneously filed an answer on his behalf.
4. Sheriff's Department counsel further stated that he had informed Defendant Howard of the need to obtain his own counsel, and indicated that Defendant Howard replied he would do so, or would represent himself.
5. To date, no counsel has filed an appearance on Defendant Howard's behalf, nor has Dr. Howard appeared pro se.

6. On May 22, 2006, the Plaintiff sent a notice of deposition to Defendant Howard, informing him that he was scheduled to be deposed on June 1, 2006. See Depo. Notice, attached hereto as Exhibit A.
7. Defendant Howard's address was obtained from the website for the Massachusetts Board of Registration in Medicine. See <<http://www.massmedboard.org>>
8. That same day, the Plaintiff deposed Defendant Whitmore, who indicated that he had spoken to Defendant Howard one day prior, and that Defendant Howard was aware of the scheduled deposition.
9. Defendant Howard failed to appear for the June 1 deposition.
10. On June 6, 2006, counsel sent a letter to Defendant Howard, informing him that further failures to comply would require Plaintiff's counsel to bring a motion before the Court. See Letter, attached hereto as Exhibit B.
11. Shortly thereafter, the Plaintiff's received a phone call from Defendant Howard during which counsel agreed to reschedule his deposition
12. On June 8, 2006, the Plaintiff sent a second notice to Defendant Howard for the agreed-upon date of June 22, 2006. See Depo. Notice, attached hereto as Exhibit C.
13. Defendant Howard again failed to appear.

WHEREFORE, the Plaintiff respectfully requests that this Court enter default judgment against Defendant Howard or, in the alternative, assess sanctions of \$1592.80.

Respectfully submitted,
The Plaintiff Scott Rodgers,
By his attorneys,

DATED: June 22, 2006

//s// Michael Tumposky
Stephen Hrones (BBO No. 242860)
Jessica D Hedges (BBO No. 645847)
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CERTIFICATE OF SERVICE

I, Michael Tumposky, hereby certify that on this 22nd day of June, 2006, I served a true and correct copy of the foregoing, where unable to do electronically, on all counsel and parties of record in this matter.

//s//Michael Tumposky
Michael Tumposky